HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.243 of 2006

Rama Nand S/o Sampat
R/o village gram Van Mahollia
P.S. Khatima, U.S.Nagar ...Applicant

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Khatima
3. Ram Kuber S/o Ram Raj Singh
R/o village gram Van Mohollia
P.S. Khatima, U.S. Nagar ...Respondents

Sri Tumul Nailwal learned counsel for the applicant.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for setting aside the chargesheet dated 28.10.2005 and summoning order dated 21.12.2005 passed by the Judicial Magistrate, Khatima in criminal case No.1580/2005 under section 363, 366, 3765 IPC.

2. It has been alleged in the FIR, statements recorded under sections 161 & 1645 Cr.P.C. and the case dairy that the present applicant has been assigned the role of enticing a minor girl from her lawful guardianship. The girl was 14 years at the time of incident. Perusal of the statements recorded under section 161 & 164 Cr.P.C., FIR and the conclusion of the I.O. reveals that the present applicant-Rama Nand has only committed the offence punishable under section 363 & 366 IPC. The entire record shows that the rape had been committed by Subhash Kumar S/o Ramchandra. But, the learned Magistrate has taken cognizance against all the accused persons under sections 363, 366 & 376 IPC. However, there is no basis for taking cognizance under section 376

IPC against the accused persons except the accused-Subhash Kumar. The Magistrate has not given any reason as to why all the accused were charged under section 376 IPC. The entire record shows that the case under section 376 IPC is made out only against Subhash Kumar. I could not understand from perusal of the record that what were the reasons for proceedings under section 376 IPC against other accused. As a matter of fact, the case under section 376 IPC is made out only against Subhash Kumar.

3. In view the above, the cognizance order is bad in law. The cognizance order passed by the Magistrate against the present applicant is bad in law. Therefore, the petition is allowed. Summoning order dated 21.12.2005 passed by the Judicial Magistrate, Khatima, District U.S.Nagar in criminal case No.1580/2015 is set aside. The case is remitted back to the learned Magistrate, who will peruse the record and thereafter he will pass the appropriate order in the light of the observations made above.

4) The petition is disposed of accordingly.

(J.C.S. Rawat, J.

Dated 21.04.2006

LSR